

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
GREENBELT DIVISION**

RCM SOLUTIONS INC.,  
4801 Tesla Drive  
Suite C  
Bowie, Maryland 20715

and

RONALD C. MARTIN,  
4801 Tesla Drive  
Suite C  
Bowie, Maryland 20715

Plaintiffs,

V.

GENERAL SERVICES ADMINISTRATION  
1800 F. St. NW  
Washington, DC 20006

Defendant.

Case No.:

## COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, and the Privacy Act, 5 U.S.C. § 552a, as amended, to order the production of records, which Defendant, General Services Administration (“GSA”) has improperly withheld from Plaintiffs, RCM Solutions Inc. (“RCM”) and Ronald C. Martin, President and CEO of RCM (“Martin”).

2. Plaintiffs seek declaratory relief, declaring that GSA is in violation of both the FOIA and Privacy Act for failing to release information and records GSA is in possession of, which Plaintiffs are entitled to under both the FOIA and Privacy Act. Plaintiffs also seek

injunctive relief, requesting that GSA immediately produce responsive records to Plaintiffs' FOIA and Privacy Act requests.

### **PARTIES**

3. Plaintiff RCM is a company with its principal place of business at 4801 Tesla Drive, Suite C, Bowie, Maryland, 20715. RCM is a business who has had contracts with GSA. Plaintiff Ronald C. Martin is the President and CEO of RCM. Both Plaintiffs are requestors of information and records GSA is withholding.

4. GSA is an agency of the United States and has possession of the information and records Plaintiffs seek.

### **JURISDICTION**

5. This court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552(a)(6)(C)(i), 5 U.S.C. § 552a(g)(1), and 28 U.S.C. § 1331.

### **VENUE**

6. Venue is proper in this court pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552a(g)(5).

### **FACTS**

7. On June 18, 2019, Salomeh Ghorbani ("Ghorbani"), Nancy Goode ("Goode"), both GSA employees, had a conversation with Martin regarding negative comments purporting to be made by Martin and another RCM employee in regards to Ghorbani and Goode. These comments were made on the Beta.sam.gov website. GSA states the purpose of the website as follow:

Beta.SAM.gov is the next phase of GSA's effort to streamline and consolidate 10 Federal award systems into a single website. (CFDA, FBO, FPDS-NG, SAM, WDOL, CPARS, FAPIIS, PPIRS, eSRS, FSRS)

The goal is to provide a central entry point for those who make, receive, and manage Federal Awards.

Beta.SAM.gov is the authoritative site for Assistance Listings, formerly CFDA. should continue to use the legacy system for all other web sites to find official information, run reports, and enter required data.

8. Beta.Sam.gov is set up to allow for feedback regarding GSA and its employees in regards to their work on government contracts. It was on this platform that negative comments were made about Ghorbani and Goode purporting to be from Plaintiff Martin and a former RCM employee. Martin was apprised of these comments by Sonya Pearrell (“Pearrell”), RCM’s contact with GSA Contracting Officer’s Representative (“COR”), who telephoned Martin on May 23, 2019.

9. After being alerted about these negative comments, Martin communicated with the COR, Ghorbani and Goode making clear that he did not post the comments.

10. Concerned with the fraudulent statements and the fact that someone was attempting to interfere with RCM’s contract by impersonating Martin, Martin formally requested the IP Address that the comments were submitted from the COR.

11. The COR acknowledged the request and then updated Martin on May 24, 2019.

12. On or about May 28, 2019, Martin received a telephone call from Vicky Niblett (“Niblett”) wherein she informed Martin that the IP address was accessing the internat/Beta.Sam.gov from Fredericksburg, Virginia and that it was the same IP Address for all three of the fraudulent negative feedback comments. Niblett added that this same IP address was being used to access Beta.sam.gov on a regular basis and during the early morning hours.

13. From May 28 through June 21, 2019, Martin has various communications with GSA employees, including its legal department. In those communications, he was informed that, “[s]ecurity will not allow us to release the IP information. In addition, that IP address has not

logged a GSA System with user credentials;” GSA might be making changes to the Beta.SAM.gov website so as to require a user to log in to provide feedback on the system; and the person who left the fraudulent impersonated comments could be “anyone, even a federal employee.”

14. On June 18, 2019, during a discussion with Ghorbani and Goode, Ghorbani made a statement reflecting she was concerned about her safety due to the fraudulent imposter comments.

15. On June 21, 2019, Plaintiffs sent an in depth letter to Pearrell wherein he set out a timeline of what had occurred and attached the prior communications Plaintiffs had with GSA employees regarding the troubling situation. (*Attachment 1*).

16. Due to GSA’s lack of response, Plaintiffs submitted a FOIA request on July 3, 2019. (*Attachment 2*).

17. Therein, Plaintiff requested the following information:

(1) The Internet Protocol (IP) Address used to access beta.same.gov and submit feedback purporting to be from RCM Solutions owner and employee(s). The feedback/comments were brought to the undersigned’s attention on May 23, 2019 by Sonya Pearrell, a GSA employee. To assist with the location of the requested information, I have enclosed correspondence I sent to GSA on June 21, 2019, which identifies persons who will have the requested information. At a minimum, the people with the information include, Matthew R. McGuire, Director, Office of the Assistant CIO Acquisition IT; Vicky Niblett, Deputy Assistant Commissioner, Integrated Award Environment and Sonya Pearrell.

(2) All information gathered by or created by GSA pertaining to the comments submitted on beta.sam.gov, addressed in No. 1 above.

18. By letter dated July 17, 2019, GSA denied Plaintiffs' requests, stating that the IP Address requested was being denied pursuant to 5 U.S.C. § 552(b)(6) in that releasing the information would constitute a clearly unwarranted invasion of personal privacy and that the "comments to the beta.sam.gov were part of the agency's deliberative process with respect to forming a solicitation and are exempt from release, per the FOIA U.S.C. § 552(b)(5). (*Attachment 3*).

19. By correspondence dated July 30, 2019, sent via certified mail, Plaintiffs submitted a FOIA appeal, arguing that the information should not have been withheld pursuant to 5 U.S.C. 552(b)(5) (deliberative process privilege) and (b)(6). Plaintiffs argued that the information requested was not an intra-agency communication and was not part of the deliberative process in that comments made by "persons perpetrating a fraud by misusing beta.sam.gov and submitting comments that purport to be from someone else is not part of any deliberative, consultative, decision-making process of the government." Plaintiffs further asserted that an IP address belonging to someone who has perpetrated a fraud using beta.sam.gov does not have any privacy expectation and that it is not a "clearly unwarranted invasion of personal privacy" to release an IP address for comments made on a public government website claiming to be someone they are not, especially where the requestor is the one who the impostor is claiming to be." (*Attachment 4*).

20. On August 8, 2019, Naisha Johnson, Assistant General Counsel –LG, GSA, emailed Plaintiff Martin and asked for clarification regarding the appeal, which Martin responded to that same day. (*Attachment 5*).

21. By letter dated September 4, 2019, GSA issued a final decision on Plaintiffs' FOIA Appeal, denying the requested information. Though GSA provided documents, it redacted information and did not provide the IP Address. In denying Plaintiffs' FOIA Appeal, it, again relied on 5 U.S.C. §§

552(b)(5) and (b)(6). However, on this go around, GSA's reliance on 5 U.S.C. 552(b)(5) is for the attorney-client privilege. GSA withheld the IP Address and names of the individuals in various GSA emails pursuant to 5 U.S.C. 552(b)(6). (*Attachment 6*).

22. Not only were the fraudulent imposter comments tortious but they implicate criminal statutes.

23. Since the fraudulent imposter comments were made, GSA has not extended Plaintiff RCM's contract with GSA and the persons about whom the fraudulent imposter comments were made have made statements that they do not want RCM doing business with GSA.

24. Plaintiffs have fully exhausted their administrative remedies.

#### **FREEDOM OF INFORMATION ACT CLAIM**

25. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set forth herein.

26. Plaintiff is entitled by law to access the information requested under FOIA as there is no privacy interested in the IP Address from where the fraudulent imposter comments were sent and where the person who was being impersonated is the requester.

27. Plaintiff is entitled by law to access to communications and other information pertaining to the fraudulent imposter comments because they do not include legal advice, parts of the communications included requester and parts of the information were already released prior to requester filing the FOIA request, thereby waiving any so-called privilege.

28. GSA is in violation of FOIA, 5 U.S.C. § 552 by failing to release information requested by Plaintiffs.

#### **PRIVACY ACT CLAIM**

29. Plaintiff Martin realleges and incorporates by reference paragraphs Nos. 1 - 22 as if fully set forth herein.

30. Plaintiff is entitled by law to access his records under the Privacy Act.

31. GSA is in violation of the Privacy Act, 5 U.S.C. § 552a, by failing to provide Plaintiff Martin access to his own records.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that this Court:

(a) Declare that GSA has violated the FOIA and the Privacy Act by not releasing information requested by Plaintiffs.

(b) Order GSA to immediately release all records responsive to Plaintiffs' requests and grant Plaintiffs access to the requested information and records;

(c) Award Plaintiffs their costs and reasonable attorney fees in this action, as provided in 5 U.S.C. § 552(a)(4)(E) and 5 U.S.C. § 552a(g)(3)(A) and (B); and

(d) Grant such other and further relief as may deem just and proper.

Respectfully Submitted,

/s/ Ruth Ann Azeredo

Ruth Ann Azeredo

Law Office of Ruth Ann Azeredo, LLC

1997 Annapolis Exchange Parkway

Suite 300

Annapolis, Maryland 21401

(410) 558-1915

(410) 558-1917 Fax

Email: [ruthazeredo@comcast.net](mailto:ruthazeredo@comcast.net)

-and-

Timothy W. Romberger, Esquire

1025 Connecticut Avenue, N.W.

Suite 1000

Washington, DC 20036

(202) 248-5053

[timromberger1@comcast.net](mailto:timromberger1@comcast.net)

Date: October 9, 2019